

ORIGINAL TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

TRACEY L. JOHNSON AND DAVID JAMES, JR. PLAINTIFFS
VERSUS CIVIL ACTION NO. 2:10-CV-00036-WAP-SAA
CITY OF SHELBY, MISSISSIPPI, AND DEFENDANTS
HAROLD BILLINGS

DEPOSITION OF MARION BEDFORD

APPEARANCES:

LUTHER C. FISHER IV, ESQUIRE
Waide & Associates
332 North Spring Street
Tupelo, Mississippi 38804

REPRESENTING THE PLAINTIFFS

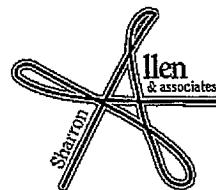
LATOYA C. MERRITT, ESQUIRE
Phelps Dunbar
4270 I-55 North
Jackson, Mississippi 39211

REPRESENTING THE DEFENDANTS

ALSO PRESENT: David James

Taken at the instance of the Plaintiffs
At Shelby City Hall
305 3rd Street
Shelby, Mississippi
On March 31, 2011, at 9:30 a.m.

REPORTED BY: SHAUNA W. STANFORD, CSR
CSR NO. 1380



(601) 825-6339 Fax (601) 825-1155
P. O. Box 1731, Jackson, MS 39215
www.sharronallen.com

EXHIBIT

2

1 officers. Correct?

2 A. Correct.

3 Q. Okay. And this policy -- I did want to ask
4 you about this one specific policy, which is Law
5 Enforcement -- let me see -- Policies and Procedures
6 3.8, Discipline and Accountability, and ask you -- this
7 gives three different reasons that an officer may be
8 terminated: Economic necessity -- I guess if there's
9 not enough money -- or if a member fails to demonstrate
10 a willingness or ability to improve his conduct,
11 behavior, or performance deficiencies without intense
12 supervision-- meaning if he's not doing a good job is
13 that -- and then, three, failing to -- it says "failing
14 to terminate the member creates an unreasonable risk of
15 negligently retaining a member who has failed to
16 display the necessary competencies or quality of
17 performance to remain in his position."

18 Is it your understanding that those are the
19 reasons that you need to terminate an officer?

20 MS. MERRITT: Objection to the form.

21 A. Those are what we had in the policy book, so
22 yes.

23 BY MR. FISHER:

24 Q. And this policy book is available for
25 officers to refer to?

1 A. Yes.

2 Q. Okay. And they are expected to be reasonably
3 familiar with the policies of the department. Is that
4 true?

5 A. That is true, but the board also -- I don't
6 know if it was before they terminated him or after they
7 terminated him; they voted to disregard this policy.
8 book and went back to an old policy book, so . . .

9 Q. Okay.

10 A. So this policy and procedure book here is no
11 longer in use.

12 Q. Okay. And if I understand you, then, you
13 don't recall specifically whether it was in use when
14 they were fired or not. Is that correct?

15 A. Correct.

16 Q. Okay. All right. As chief and as their
17 supervisor, my question is: Were Officers James or
18 Johnson guilty of any of those things?

19 A. No.

20 MS. MERRITT: Objection to the form.

21 THE COURT REPORTER: Did you say no?

22 THE WITNESS: No.

23 BY MR. FISHER:

24 Q. Okay. Now, this policy -- and I understand
25 that there's some question as to whether or not this

Wmess Bedford
Exhibit No. 1
Date: 3-31-11
Sharron Allen & Associates

CITY OF SHELBY POLICE DEPARTMENT
Law Enforcement
Policies and Procedures

Subject: Discipline & Accountability	Policy Number: 3.8
Issue Date:	Revision Date:
Approval Authority Title and Signature:	

POLICY:

Officers and civilian employees use their best effort to live up to the ideals expressed in our Mission Statement, Code of Ethics, and Objective Statements. Additionally, all members of the department obey department *policies and procedures*, written and verbal orders, rules, directives, and standards of conduct. Noncompliance with these goals and standards results in disciplinary action to improve individual and group performance.

DISCUSSION:

Discipline in the law enforcement profession is essential to our very survival, and is the determining factor in securing the trust of those we serve. To maintain a high level of discipline, employees are required to conduct themselves in accordance with standards of conduct which a reasonable person would know is expected of someone in the workplace who is granted the authority of the State.

PROCEDURES:

Disciplinary Action:

Any noncompliance or violation of conduct that interferes with operations, discredits the department or is offensive or dangerous is grounds for disciplinary action, whether or not such behavior is specifically prohibited by written goal, objective, policies and procedures, order, rule or directive.

Employees are expected to perform assigned tasks efficiently and safely and in accord with applicable quality standards and safety requirements.

All employees are expected to treat visitors, employees, managers, supervisors, and others in the work place with courtesy and respect.

City of SHELBY POLICE DEPARTMENT does not discriminate or show favoritism on the basis of *sex, ethnicity, race, religion, color, age, or physical disability*. Disciplinary

This data is proprietary and will not be duplicated, disclosed, or discussed, without the written permission of this department. Data

Subject to this restriction is contained throughout this publication.

actions are based on the concepts of *equality and equity*.

The department has the sole right to determine the disciplinary process applicable in particular circumstances as well as the discipline to be imposed for violations or non-compliance.

Progressive disciplinary measures are generally followed. However, employee attitudes and performance, and any extenuating and mitigating factors may be considered when determining the discipline to be imposed.

Progressive discipline may include, but is not limited to, *counseling, warning, and suspension, or any other remedial steps deemed desirable, such as demotion, permanent or temporary disqualification, transfer, wage reduction, training and/or Imposing conditions on continued employment.*

Discharge from the department may be imposed for a first offense and may be imposed at any point in a progressive chain, whether or not any other step(s) of progressive discipline have first been imposed.

Assistant Chief of Police is designated to oversee disciplinary actions, and will normally be consulted prior to imposing and/or determination of any discipline.

The department may, in its discretion, keep documents and other records of disciplinary action, which may be considered in future personnel decisions.

In cases of serious misconduct such as major breaches of policy or violations of law, procedures contained in this policy may be disregarded. Disciplinary action on the part of the department does not shield the officer or employee from criminal or civil charges that may arise out their deliberate or negligent acts.

General Reasons for Disciplinary Action:

An officer or civilian employee may be disciplined or terminated for a number of reasons including, but not limited to:

1. Dishonesty, such as falsifying or altering any document, record, or report relating to the department and/or relating to employment, such as a time card, employment application, medical report, or expense reimbursement request and including providing false or misleading information and/or failing to provide truthful and complete information in connection with any investigation.
2. Conviction of a criminal offense, including a felony or certain misdemeanors, or any other offense involving moral turpitude.
3. Insubordination to the directives of a superior.
4. Violation of the Civil Service Law.
5. Reporting to work under the influence of alcohol or any drug not prescribed by a licensed physician.

RESTRICTED LAW ENFORCEMENT DATA

This data is proprietary and will not be duplicated, disclosed, or discussed, without the written permission of this department. Data subject to this restriction is contained throughout this publication.

6. Offensive conduct or language toward the public, superior, or other employees.
7. Carelessness or negligence in the use of departmental property.
8. Accepting or encouraging the taking of a bribe.
9. Encouraging other persons to commit illegal acts.
10. Failing to report to work, court or official duty assignments without reasonable cause.
11. Excessive tardiness.
12. Failure to observe starting, quitting, and and/or break times.
13. Horseplay or dangerous acts.
14. Violation of security, health, safety or environmental standards.
15. Careless workmanship or production.
16. Competing with the interests of the department.
17. Theft, attempted theft, misappropriation, or willful damage to property.
18. Distribution, transfer, sale, possession or consumption at the work place or on government property of any alcohol, intoxicant, or controlled substance which has not been prescribed for the one in possession, the recipient, or the one consuming.
19. Threatening, intimidating, harassment, coercing, abusing, or interfering with a supervisor, manager, independent contractor, supplier, visitor or co-employee, either by words or action.
20. Unauthorized disclosure of any confidential information.
21. Failure to report any accident, misconduct, or rule violation to an immediate supervisor, or the Assistant Chief of Police of the department or failing to cooperate with and/or failing to provide information requested in connection with any authorized investigation or inquiry.

Reporting of Disciplinary Action:

Whenever disciplinary action is used, the employee will be advised:

1. Exact offense violated;
2. How the violation affects ability to be an effective, efficient, or safe employer, or adversely effects the department;
3. What the member must do to avoid future disciplinary action;
4. How much time the member has to correct the problem; &
5. What further disciplinary action, including termination, will occur if performance does not improve

Non-Disciplinary Action:

Not every supervisory interaction or intervention with a member is to be construed as discipline. The following are examples of *non-disciplinary* courses of action:

1. **Supervisory Consulting:** Except in cases of culpability, correcting undesirable conduct is first handled by the Shift Supervisor in an informal atmosphere. This means taking the member aside and discussing the problem, candidly and openly. These actions may or may not be formally documented on the first

This data is proprietary and will not be duplicated, disclosed, or discussed, without the written permission of this department. Data subject to this restriction is contained throughout this publication.

occasion, depending on the supervisor's discretion. Repeat violations will be documented by the supervisor.

2. **Counseling:** At times, personal problems may interfere with the member's ability to perform normally. When the results are not serious enough for discipline but call for a more formal type of supervision, counseling is an excellent tool to help the member. Counseling is not a form of discipline but is a tool available to correct problems and refocus on performance priorities.
3. **Administrative Leave:** Administrative leave occurs any time the member must be removed from duty until an investigation or other administrative proceeding is completed. Usually situations of this nature involve cases of suspected misconduct, such as alleged criminal activity, fighting, continued non-compliance, or being mentally or physically unfit for duty. In such cases, leaving the member in position would create an unreasonable liability or safety issue for fellow workers or the department. The Shift Supervisor can order a *relief from duty* and then immediately report the action to the Assistant Chief of Police. The Assistant Chief of Police then initiates an investigation and makes a decision within 24 hours about whether the relief will continue, and for how long.
4. **Administrative Furloughs:** Following a *deadly use of force or major injury to the officer*, a furlough may help the member adjust and handle any personal or emotional needs resulting from traumatic events. Administrative furloughs are mandatory, initiated by the Shift Supervisor. Furloughs should continue until the officer involved has received counseling by the Chief of Police or from a licensed professional.
5. **Layoffs:** It may be necessary to layoff employees if the department is experiencing a shortage of funds, work, or when a technological advancement eliminates a job. Any decision to layoff employees is the responsibility of, and at the discretion of the Chief of Police, with the consent of the **SHELBY** board.

Steps of Progressive Disciplinary Action:

The following are progressive steps that can be taken in efforts to discipline employees of City of Cleveland Police Department. It is not necessary to start at step one if the seriousness of the employee's conduct exceeds that form of discipline. At the discretion of the Assistant Chief of Police, the following manners of discipline may be pursued:

1. **Written Warning or Reprimand:** Written warnings or reprimands are a way of recording the employee infraction. Such records will be placed in the employee's file and provided to the employee within 48 hours of the infraction.
2. **Suspension:** An employee may be suspended without pay by the Assistant Chief of Police for no more than five [5] working days. Suspension is the second step in discipline if the act, and/or the result of the act, is serious enough that a written warning or reprimand would not be sufficient for disciplinary action. Department members may appeal a suspension, in writing to Chief of Police.
3. **Demotion:** The employee may be demoted to a position of a lower grade by the Chief of Police. Demotion as a form of discipline is intended to be punitive and can occur concurrently with a suspension.

RESTRICTED LAW ENFORCEMENT DATA

This data is proprietary and will not be duplicated, disclosed, or discussed, without the written permission of this department. Data subject to this restriction is contained throughout this publication.

4. **Termination:** If all other forms of discipline fail to correct the conduct of the employee, termination will be the last resort.

Termination:

It is the policy of **CITY OF SHELBY POLICE DEPARTMENT** to terminate members when:

1. Economic necessity requires reductions in the workforce;
2. A member fails to demonstrate a willingness or ability to improve his or her conduct, behavior, or performance deficiencies without intense supervision; or
3. Failing to terminate the member creates an unreasonable risk of negligently retaining a member who has failed to display the necessary competencies or quality of performance to remain in his or her position.

Types of Termination:

When an employee of **CITY OF SHELBY POLICE DEPARTMENT** is terminated, one of two types of termination will be noted, including:

1. Termination with fault, for such reasons as:
 - a. Failure to follow department goals, policies & procedures and rules;
 - b. Failure to obey a verbal or written order;
 - c. Insubordination;
 - d. Threatening a supervisor;
 - e. Fighting and assaults or provoking a fight or assault;
 - f. Forbidden harassment;
 - g. Endangering another;
 - h. Drug or alcohol abuse; or
 - i. Theft, and false reporting or witnessing.
2. Termination without fault, for such reasons as:
 - a. Excessive excused and non-excused absences;
 - b. Failure to consistently accomplish expected levels of performance results on assigned tasks;
 - c. Chronic complaining about operations to the extent that supervisors must spend excessive time dealing with problems or issues caused by complaints;
 - d. Substantial impairment of the employee relationship including unreasonable disruption to normal operations of **City of SHELBY Police Department**;
 - e. Endangering the organization's mission through actions or inaction's that contribute to an unnecessary risk to the public image;
 - f. Creating conflicts of interest; &
 - g. Any situation where performance is not reasonably expected to improve or where problems are not expected to be resolved in a reasonable time.

RESTRICTED LAW ENFORCEMENT DATA

This data is proprietary and will not be duplicated, disclosed, or discussed, without the written permission of this department. Data subject to this restriction is contained throughout this publication.

Law Enforcement Policies and Procedures, 3.8 Discipline & Accountability

Notice of Termination:

If an employee's performance requires investigation, the employee may be placed on administrative leave pending outcome of the investigation. The employee may then be terminated. The terminated member will be provided with information that includes:

1. Reasons for the termination;
2. Effective date of the termination;
3. Whom to contact regarding status of fringe and retirement benefits;
4. Statement that the content of the member's record, relating to the termination, will be made available to the member according to state public law; and
5. Statement regarding the employee's right to file an appeal, if any.

Pre-Termination Hearing:

The Chief of Police should provide a pre-termination hearing. At this hearing the Chief of Police or hearing officer may examine witnesses or review documents. A pre-termination hearing will not be provided if retention of the employee might result in damage to departmental property or injury to the employee, fellow employees, or the general public. Written notice will be provided to the member to include the date, time, and place of the hearing. The Chief of Police will notify the member of his decision as soon as reasonably possible.

Appeals Process:

The employee may file a written appeal specifying his reasons for objecting to a suspension, demotion, or termination within ten [10] days of receiving disciplinary notice. If determined that disciplinary action was not taken in good faith, the employee may be reinstated, reassigned, or sent for re-training in another job category.

RESTRICTED LAW ENFORCEMENT DATA

This data is proprietary and will not be duplicated, disclosed, or discussed, without the written permission of this department. Data subject to this restriction is contained throughout this publication.